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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,387	01/05/2006	David Peter Shaw	PL10-002	3069
21567	7590	06/09/2009	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201				SCHILLINGER, ANN M
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/563,387	SHAW, DAVID PETER	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANN SCHILLINGER	3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 December 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-7,9-12 and 14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7,9-12 and 14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7, 9-12, and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation in claims 1 and 10 describing the “intermeshing loops” has not been properly described in the Applicant's drawings and specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 3 states the recitation of “the or each” which is indefinite. Claim 2 does not clearly indicate if the wall is part of the peripheral stent. Claims 4 and 7 are indefinite because the preamble is directed to the valve and the claims attempt to add a further element, the stent.

Claim 6 recites the limitation “the perimeter.” There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiMatteo et al. (US Pat. No. 7,267,686) in view of Zilla et al. (US Pub. No. 2005/0070995). DiMatteo et al. discloses the following of the claimed invention: a prosthetic valve (10) which includes at least one flap (40); a peripheral stent/peripheral rib (30); and cutouts (62). Please see Figures 2 and 4. DiMatteo et al. does not disclose using a metallic knitted wire. Zilla et al. teaches a venous graft that is constructed from a knitted/woven wire in paragraphs 0011 and 0070 for the purpose of providing the device with the appropriate flexibility. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of DiMatteo et al. by using knitted wire to construct the prosthesis in order to provide the prosthesis with its desired flexibility.

Please note that with the use of the Zilla et al. reference, the examiner is interpreting the terms woven and knitted to be equivalent to one another.

Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiMatteo et al. in view of Zilla et al. further in view of Gabbay (US Pat. No. 6,869,444). DiMatteo et al., as modified by Zilla et al., does not disclose using titanium alloy wires. Gabbay teaches a cardiac prosthesis constructed from a titanium alloy knitted wire in col. 10, line 63

through col. 11, line 10 and col. 11, line 57 through col. 12, line 5 for the purpose of providing the prosthesis with its desired resiliency. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of DiMatteo et al. and Zilla et al. by using a titanium alloy knitted wire to construct the prosthesis in order to provide the prosthesis with its desired resiliency.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiMatteo et al. in view of Gabbay, further in view of Yang (US Pub. No. 2002/0138138). DiMatteo et al., as modified by Gabbay, discloses the invention substantially as claimed, however, they do not disclose placing an inert degradable coat over the valve. Yang teaches this coating in paragraph 0059 for the purpose of reducing the wear of the prosthetic parts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use this coating in order to reduce the wear of the prosthetic parts.

***Response to Arguments***

Due to the amendments submitted on 12/18/2008, the 35 U.S.C. 112 rejections are withdrawn.

Applicant's arguments with respect to claims 1-7, 9-12, and 14 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./  
Examiner, Art Unit 3774

/DAVID ISABELLA/  
Supervisory Patent Examiner, Art Unit 3774